

July 28, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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Seattle, Washington 98104
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REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL

SUBJECT: King County Department of Development and Environmental Services File No. L94RZ001
Proposed Ordinance No. 97-298

GARY RAYKOVICH AND CRAIG SCHIFFNER
Application for Reclassification

Location: 4.48 acres lying west of SR 169, approximately 600 feet south of Kent-Kangley Road

Applicants: Craig Schiffner & Gary Raykovich
10304 Northeast 186th Street
Bothell, WA 98011

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve time extension
Department's Final:	Approve time extension
Examiner:	Approve time extension

PRELIMINARY MATTERS:

Council motion requiring review: May 5, 1997
Notice of complete application: Not required

EXAMINER PROCEEDINGS:

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Time extension for pre-effective zoning condition
- King County jurisdiction/Examiner jurisdiction

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On May 5, 1997, the King County Council passed Motion 10196, directing the Hearing Examiner to conduct a hearing for the purpose of reviewing the petition of Applicants Raykovich and Schiffner to extend the period during which they could "actualize" the CB-P zoning granted by the Council on June 23, 1995 (Ordinance No. 11898). Subsequently, Proposed Ordinance No. 97-298 was introduced and

public notice published. The 1995 zone reclassification requires that Applicants file a complete building permit application within two years in order to place the zone change permanently on the official zoning map of the county.

2. The hearing on this matter began June 19, 1997, was continued in order to consider neighboring land uses, to provide opportunity for City of Maple Valley (hereinafter "CMV" or "the City") comments, King County Prosecuting Attorney comments (Civil Division) and rebuttal from the Applicant and the Department of Development and Environmental Services (hereinafter, "DDES" or "the Department"). The continued hearing was postponed until July 22, 1997, upon request from the City.
3. The Raykovich/Schiffner zone reclassification was approved in 1995 by Ordinance No. 11898 which incorporated the Examiner's report (Exhibit No. 29). As indicated in Finding No. 1, above, that action required actualization of the zone reclassification by filing a complete building permit application (including payment of requisite fees) within two years. The condition states:

Pre-Effective Condition. The Applicant shall file a complete application (including all fees then due) for a building permit for development of the property for CB use within two years following Metropolitan King County Council approval action on this request. The application for building permit shall meet all the provisions of a completed application, except that the zone classification of CB shall not become effective until Department acceptance of a complete building permit application.

The Department indicates that this condition was based upon the 1984 Tahoma/Raven Heights Community Plan Policy TRH 17. See Finding No. 8, below. The pre-effective condition was challenged by any party at the time of adoption.

4. Throughout nearly all of the Ordinance No. 11898 two year implementation period, the Applicant and DDES were involved in a dispute regarding SEPA fees related to the zone reclassification approval. Early on, DDES advised the Applicant¹:

. . . your project will be put on hold until your account is paid in full.
. . . all work will cease until further notification from the finance section.

This DDES directive led the Applicant to understand that a permit application would not be accepted; or, if it were accepted, it would not be processed. Looking at the enormous cost (possibly \$50,000 in engineering, design and consulting fees, as well as County permit review fees) the Applicant did not file any permit application "under protest." In fact, the Applicant was uncertain regarding whether any such application would be accepted.

Eventually, the Applicant won the dispute regarding SEPA fees, a dispute which eventually involved the Office of Citizen Complaints. The SEPA fees due to the County for the Raykovich/Schiffner project were reduced from approximately \$3,500 to approximately \$180. However, by that time, it was too late to file a complete application. Consequently, Raykovich and Schiffner petitioned Councilman Kent Pullen for a time extension, resulting in the unanimously adopted motion described in Finding No. 1, above.

5. Contrary to Paragraphs 6, 7, and 8 of Motion 10196, water is available to this property. The Covington Water District states²:

¹ Exhibit No. 23.B, in part

² Exhibit No. 25, in part.

While it is true that Covington Water District is in a connection moratorium and is not issuing certificates of water availability for new development, this parcel is committed for service under the moratorium and the District has previously issued water availability letters dated January 9, 1997, January 29, 1996, April 25, 1995 and March 23, 1994.

The developers also made deposits on January 9, 1997, for 4 metered services to supply a total of ten equivalent residential units (ERU's). Covington Water District is therefore able to issue a certificate of water availability for 10 ERU's for the site upon a request from the developer.

Covington Water District is able to issue a certificate of water availability because the property is committed under moratorium and furthermore, the water availability letter issued January 9, 1997 is still valid.

Covington Water District has no objection to extending the period of time to satisfy a pre-effective condition established at the time of a zoning reclassification it merely wishes to clarify the findings in the motion.

6. The Applicant feels that this ownership has been treated consistently unfair since the 1984 area zoning. At that time Raykovich/Schiffner applied for reclassification but did not receive it, apparently receiving only a commercial -plan designation (thereby requiring subsequent reclassification). However, the "Bitney" property across the street received actual zone reclassification to CB-P. The "Spoerer property," northeast of the subject property, is now the subject of a King County development permit review. That review began prior to enactment of the CMV moratorium on new development permits.

DDES research has not discovered why the subject property was treated differently from the Bitney property in 1984. Due to timing, the Spoerer property is not subject to the CMV development permit application moratorium, but the subject Raykovich/Schiffner property is.

7. The Applicant would prefer elimination of the 1995 condition that the reclassification condition which requires "actualization" by filing a complete building permit application. This sort of requirement has been used in King County for decades as a tool to preclude "speculative" zone changes. That general public interest policy is expressed in Tahoma/Raven Heights Community Plan Policy TRH 17, which states:

Expansion of centers should be conditioned on a firm commitment to develop new commercial activities. To this end, building permit applications should be required within two years of rezoning.³

The Applicant argues that the above-cited language has been misinterpreted and misapplied by the Department, Examiner and Council.

8. No individual or agency has expressed opposition to reclassification of the subject property.
9. The subject property has been designated as "Commercial" since at least adoption of the 1984 Tahoma/Raven Heights Community Plan.

³ The policy is accompanied by the following explanation on page 27 of the Plan:

In order to discourage rezoning sites for speculative purposes, this policy recommends the use of conditional zoning in areas designated for future commercial development. As one of the conditions, the zoning would become effective only if building permit applications are submitted within two years. If such applications are not filed, the property would remain non-commercially zoned. This provision would apply to properties potentially zoned for commercial use or to additional requests for commercial zoning in areas designated for future commercial development.

10. Although this hearing record contains substantial, and useful, testimony from the Department, it contains no departmental staff report. The Department indicates that it has prepared no staff report in this review because no application or review fees have been paid.
11. No SEPA review is required in this case because there is no change in the proposal since the previous review.
12. Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

CONCLUSIONS:

1. The Council's motion limits the Examiner's authority to recommending a time extension only. The Council's motion does not provide the Examiner authority to consider eliminating the zone actualization requirement entirely.
2. The merit for the extension is not questioned or challenged by any reviewer or member of the public. It is recommended by DDES and supported by the City. It should be granted.
3. As indicated in the findings above, no further SEPA review is required.
4. CMV Resolution R 97-25, Section 2, requires that the County refer its questions of interpretation "regarding the application of this moratorium or any of its exemptions" to the City of Maple Valley. The Kenyon Law firm, representing the City, has suggested that removal of the time requirement is a "rezone" which is prohibited by the CMV moratorium. I disagree. There is no language in R 97-25 or its predecessor resolutions which regulate time extensions or interpretation of County Community Plan policy. The moratorium applies to "development permits and approvals for property located within the corporate limits of the new City of Maple Valley." Section 1 of R 97-25 goes on to define "development permits and approvals" to include (but not be limited to) "subdivision approvals, short subdivision approvals, approvals for any and all rezones, site plan review approvals, multi-family development permits and approvals and building permits for development activity resulting in the creation of new units" Is the elimination of a "building permit requirement within two years" a "rezone"? No. Further, this review began prior to May 5, 1997, **before** adoption of CMV R 97-25, Section 2 (on June 9, 1997)! This pending action began **before** the pertinent City resolution was adopted.
5. The conditional reclassification, approved in 1995 (together with its conditions) is vested and cannot be removed by the City.
6. The Department, Examiner and Council certainly have the latitude to interpret Policy TRH 17 as they did in 1995.

RECOMMENDATION:

GRANT an additional two year extension to allow the Applicant to file a complete building permit application in order to "actualize" (i.e., bring into actuality; to implement) the CB-P conditional classification applied to this property by Ordinance No. 11898 in 1995.

RECOMMENDED this 28th day of July, 1997.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 28th day of July, 1997, to the following parties and interested persons:

Gary Raykovich and Craig Schiffner
Duane Hoskey
R. Thorpe, Robert Thorpe & Associates
Robert Josephson, WSDOT, NW Region
Lisa Marshall, Attorney, City of Maple Valley

Trudy Hintz, DDES/LUSD, Site Development
Aileen McManus, DDES/BSD, Site Engineering
Lisa Pringle, DDES/LUSD
Karen Scharer, DDES/LUSD, Site Plan Review
Angelica Velasquez, DDES/LUSD, SEPA
Caroline Whalen, Metropolitan KC Council
Rick Bautista, Metropolitan KC Council
Chuck Maduell, Deputy Prosecuting Attorney

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before August 11, 1997**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before August 18, 1997**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

MINUTES OF THE JUNE 19, 1995 PUBLIC HEARING AND THE JULY 22, 1997, REOPENED HEARING ON
DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L94RZ001 - RAYKOVICH/
SCHIFFNER:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer, Aileen McManus, Robert Thorpe, Gary Raykovich, and Craig Schiffner.

On June 19, 1997 the following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the June 19, 1995 public hearing
- Exhibit No. 2 Application, received May 12, 1994
- Exhibit No. 3 Environmental Checklist, received May 12, 1994
- Exhibit No. 4 SEPA Threshold Determination, dated March 7, 1995
- Exhibit No. 5 Affidavit of Posting, posting date May 15, 1995
- Exhibit No. 6 Assessor Maps: 34-22-06, 27-22-06
- Exhibit No. 7 Revised site plan, dated January 10, 1995
- Exhibit No. 8 Certificate of Water Availability, April 25, 1995
- Exhibit No. 9 Certificate of Sewer Availability, March 11, 1994
- Exhibit No. 10 September 8, 1994 memo from Paul Reitenbach, Chief, Community Planning Section
- Exhibit No. 11 Letter from R.W. Thorpe & Associates to Mr. Beavers re: wildlife, February 27, 1995
- Exhibit No. 12 Letter from Washington State Dept. Natural Resources, dated February 16, 1995
- Exhibit No. 13 Memo from Tom Beavers to Angelica Velasquez (undated)
- Exhibit No. 14 Traffic Impact Analysis dated April 1994 by David I. Hamlin & Associates
- Exhibit No. 15 Memo from Aileen McManus, May 24, 1994
- Exhibit No. 16 Letter from Washington State Dept. Transportation dated November 30, 1994
- Exhibit No. 17 Letter from WSDOT dated October 4, 1994
- Exhibit No. 18 Letter to Aileen McManus from WSDOT, June 19, 1995
- Exhibit No. 19 Revised site plan dated June 8, 1995
- Exhibit No. 20 Memo dated June 14, 1995 to Darrell Connell from Craig Schiffner
- Exhibit No. 21 Memo dated June 12, 1995 to Duane Hoskey from Craig Schiffner
- Exhibit No. 22 Neighborhood Shopping Center Characteristics prepared by Neighborhood Retailers of Washington, June 1992
- Exhibit No. 23 Letter dated May 6, 1997, from Craig Schiffner to Greg Kipp (with attachments)
 - A. DDES statement dated May 3, 1996
 - B. Letter dated May 8, 1996, from Geneva A. Croft (DDES Revenue Accounting Supervisor) to Raykovich and Schiffner
 - C. DDES invoice dated September 11, 1996
 - D. Second DDES invoice dated September 11, 1996
 - E. Letter dated October 15, 1996, from Geneva A. Croft to Raykovich/Schiffner
 - F. Statement dated October 9, 1996
 - G. Fee invoice dated November 25, 1996
 - H. Activity Fee Summary dated November 25, 1996
 - I. Calculation of interest reduction
- Exhibit No. 24 Letter (with attachments) dated May 19, 1997, from Craig Schiffner/Gary Raykovich to Greg Kipp
- Exhibit No. 25 Letter dated May 30, 1997, from Covington Water District to James N. O'Connor, KC Hearing Examiner
- Exhibit No. 26 Ordinance No. 12751
- Exhibit No. 27 Resolution R97-09 City of Maple Valley
- Exhibit No. 28 Motion 10196 (King County)
- Exhibit No. 29 Examiner's Report and Recommendation
- Exhibit No. 30 Ordinance No. 11898 adopting Hearing Examiner's Report and Recommendation

The following exhibits were offered and entered into the record at the July 22, 1997, reopened public hearing:

- Exhibit No. 31 Memorandum from James N. O'Connor to Janet Masuo with attached proposed ordinance
- Exhibit No. 32 Letter dated May 30, 1997, from Covington Water District to James N. O'Connor
- Exhibit No. 33 Fax cover sheet from Karen Scharer to Lisa Marshall with message, City of Maple Valley Resolution No. R-97-25, excerpts Title 35 RCW: Cities and Towns, and map showing current zoning of area
- Exhibit No. 34 Letter dated June 20, 1997, from R. S. Titus to Charles Maduell with attached Notice of Hearing Continuance
- Exhibit No. 35 Letter (with attachments) dated June 23, 1997, from Craig Schiffner to R. S. Titus
- Exhibit No. 36 Letters (address change and request for continuance) dated June 24, 1997, from Lisa Marshall to R. S. Titus
- Exhibit No. 37 Memorandum dated June 25, 1997, from R. S. Titus to Janet Masuo requesting proposed ordinance number and affidavit of publication
- Exhibit No. 38 Memorandum dated July 7, 1997, from R. S. Titus to Chuck Maduell, Lisa Marshall, Gary Raykovich and Craig Schiffner, and Karen Scharer advising of proposed ordinance number and forwarding copy of

affidavits of publication

Exhibit No. 39 Letter dated July 11, 1997, from Lisa Marshall to R. S. Titus with the following attachments:

- a. fax memo from DDES dated June 19, 1997
- b. City of Maple Valley, Resolution
No. R-97-25
- c. City of Maple Valley Resolution
No. R-97-19

Exhibit No. 40 Memorandum dated July 14, 1997, from Chuck Maduell, Senior Civil Deputy Prosecuting Attorney, to R. S. Titus with the following attachments:

- a. fax memo from DDES dated June 19, 1997
- b. City of Maple Valley, Resolution
No. R-97-25
- c. DDES map and urban growth boundary and City of Maple Valley proposed incorporation boundary

Exhibit No. 41 Notice of Change of Hearing Location dated July 15, 1997

Exhibit No. 42 Letter dated July 18, 1997, from Craig Schiffner to R. S. Titus

Exhibit No. 43 DDES Notice of Application Commercial Site Development Permit for Spoerer property; application filed February 24, 1997

Exhibit No. 44 Current use annotated zoning map (excerpt Exhibit No. 25 - enlarged)